

**Michigan Office of Administrative Hearings and Rules**

**Administrative Rules Division (ARD)**

611 W. Ottawa Street

Lansing, MI 48909

Phone: 517-335-8658 Fax: 517-335-9512

**REGULATORY IMPACT STATEMENT  
and COST-BENEFIT ANALYSIS (RIS)**

**Agency Information:**

**Department name:**

Licensing and Regulatory Affairs

**Bureau name:**

Bureau of Community and Health Systems

**Name of person filling out RIS:**

Tammy Bagby

**Phone number of person filling out RIS:**

517-243-9351

**E-mail of person filling out RIS:**

BagbyT@michigan.gov

**Rule Set Information:**

**ARD assigned rule set number:**

2021-81 LR

**Title of proposed rule set:**

Nurse Aide, Trainer and Training Program Rules

**Comparison of Rule(s) to Federal/State/Association Standard**

**1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.**

The proposed rules are in accordance with the department's authority set forth in the Public Health Code, Act 368 of 1978, Part 219, MCL 333.21923 and do not exceed or contradict Part 219 of the Code or federal standards governing this program under 42 USC 1395i-3 and the Code of Federal Regulations (CFR). There are no state or national licensing agency or accreditation association for this provider type.

**A. Are these rules required by state law or federal mandate?**

The department may promulgate rules under the Public Health Code, Act 368 of 1978, specifically MCL 333.21923.

The federal standards do not prohibit states from enacting additional standards and requirements under state law.

**B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.**

The proposed rules comport with and do not exceed federal standards.

**2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.**

The proposed rules are consistent with the standards required in Part 219 of the Code (MCL 333.21923 ) and comport with federal standards that govern the nurse aide certification program in all 50 states. The bureau reviewed rules in like states or states where rules exist including Ohio, Tennessee, and Wisconsin. The proposed rules are equal to or less than the requirements within these states.

**A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.**

The proposed rules do not exceed the standards in Ohio, Tennessee, and Wisconsin.

**3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.**

The proposed rules comport with and do not duplicate, overlap, or conflict with federal standards under 42 USC 1395i-3 and the Code of Federal Regulations (CFR).

**A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.**

The proposed rules were reviewed to assure they comport with federal standards 42 USC 1395i-3 and the Code of Federal Regulations (CFR).

**4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.**

The proposed rules are not more stringent than the federal standards 42 USC 1395i-3 and the Code of Federal Regulations (CFR).

**5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.**

The proposed rules are not more stringent than the federal standards 42 USC 1395i-3 and the Code of Federal Regulations (CFR).

## **Purpose and Objectives of the Rule(s)**

**6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.**

The proposed rules comport with the limitations set forth in MCL 333.21923 and are to assist with the administration of Part 219 of the Code including requirements for surveying a nurse aide training program, investigating allegations against a nurse aide in a health facility or agency or another setting where a nurse aide engages in the practice as a nurse aide, investigating a nurse aide trainer or nurse aide training program, and administering and enforcing Part 219 of the Code. The proposed rules establish eligibility requirements to renew a registration or permit, competency requirements, and examination requirements for registration.

**A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.**

Part 219 of the Code became effective February 19, 2018, and the proposed rules are the first set of administrative rules to be established. The program includes oversight of approximately 42,000 certified nurse aides, 250 permitted nurse aide training programs, and 500 permitted nurse aide trainers. The proposed rules clarify processing applications, renewing certifications and permits, conducting inspections of training programs, conducting investigations of nurse aides, training programs, and trainers, and enforcement action for noncompliance with these proposed rules and Part 219 of the Code.

**B. Describe the difference between current behavior/practice and desired behavior/practice.**

Part 219 of the Code became effective February 19, 2018, and these proposed rules are the first set of administrative rules to be established. Prior to enactment of Part 219, this program was solely governed under the federal standards. The proposed rules provide additional clarity to administration of the program including setting timelines for processing applications and conducting inspections and investigations where the federal standards are ambiguous or undefined.

**C. What is the desired outcome?**

To comply with MCL 333.21923 to establish an administrative rule set to administer Part 219 of the Code and provide transparency and clarity in the department's administration of this program including timelines for processing applications, setting minimum standards for certified and permitted individuals and programs, conducting inspections and investigations, and remedies for noncompliance.

**7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.**

Part 219 of the Code became effective February 19, 2018, and these proposed rules are the first set of administrative rules to be established. Prior to enactment of Part 219, this program was solely governed under the federal standards. The proposed rules provide additional clarity to administration of the program including setting timelines for processing applications and conducting inspections and investigations where the federal standards are ambiguous or undefined. In the absence of these rules, there is a higher likelihood that the department will not be successful or able to sustain a reduction in the abuse, neglect, or misappropriation of property by nurse aides certified under this program.

**A. What is the rationale for changing the rules instead of leaving them as currently written?**

Part 219 of the Public Health Code became effective February 19, 2018, and these proposed rules are the first set of administrative rules to be established under this new Part in the Code.

**8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.**

The proposed new rules help ensure the health, safety, and welfare of residents receiving services in nursing homes and other covered licensed settings by setting forth a minimum standard for training and certifying nurse aides under this program. The state level rules promote a less burdensome alternative to the federal standards by allowing the department additional enforcement options granted under the federal standards that includes limited and lifetime bans from functioning as a nurse aide.

**9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.**

This is a new rule set and therefore there are no obsolete or unnecessary rules.

## **Fiscal Impact on the Agency**

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

**10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).**

The proposed rules do not pose either an increase or decrease in the number of applications received by the department for certification or permits by nurse aides, nurse aide trainers, or nurse aide training programs, so there is no fiscal impact to the agency.

**11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.**

There are no new expenditures resulting from the proposed rules or impact on fees established in Part 219 of the Code. The funding sources for the program are fees and Medicare and Medicaid funding.

**12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.**

The proposed rules are authorized by MCL 333.21923 and there are no additional burdens placed on nurse aides, trainers, and training programs. The rules are not duplicative of state law or federal standards.

**A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.**

There are no identified burdens.

## **Impact on Other State or Local Governmental Units**

**13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.**

There is no increase or decrease in revenues to other state or local governmental units.

**14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.**

There are no additional responsibilities placed on any other governmental unit.

**A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.**

There are no actions that must be taken by any other governmental units to comply with these rules.

**15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.**

No additional expenditures are associated with the proposed rules. Therefore, no appropriation to state or local government units will be required.

## **Rural Impact**

**16. In general, what impact will the rules have on rural areas?**

The proposed rules allow for the use of virtual teaching methods for permitted training programs. Virtual training opportunities will allow more access to individuals in rural areas without travel.

**A. Describe the types of public or private interests in rural areas that will be affected by the rules.**

Licensed health facilities and agencies, public and private, will benefit from more individuals in rural areas being trained as nurse aides as well as permitted trainers in rural areas having greater access to students through virtual trainings.

## **Environmental Impact**

**17. Do the proposed rules have any impact on the environment? If yes, please explain.**

There is no environmental impact.

## **Small Business Impact Statement**

**18. Describe whether and how the agency considered exempting small businesses from the proposed rules.**

The proposed rules do not impact or place a requirement on small businesses such as small, licensed health care providers, but help assure these businesses have trained and qualified staff to provide services in their licensed setting. The only small businesses impacted by these rules are small nurse aide training programs but there are no new requirements in these rules not already set forth in state or federal regulations that would adversely impact these training programs. Therefore, no exemptions were considered for small training programs.

**19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.**

The proposed rules do not place any additional economic burden on small businesses.

**A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.**

There are 250 permitted nurse aide training programs in the state. Most of these training programs are operated by colleges, proprietary schools, and large health care systems. These proposed rules do not add any additional requirements for training programs that are not already set forth in state or federal regulations.

**B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.**

The department did not establish any different requirements for small training programs as the proposed rules are uniform relative to reporting, record keeping, and other administrative costs.

**C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.**

The proposed rules are uniform for all training programs, as the requirements set forth in these rules are minimal.

**D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.**

There are no design or operation standards required by the proposed rules for training programs.

**20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.**

There is no disproportionate impact from the proposed rules.

**21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.**

There are no reporting requirements to the department for training programs set forth in the proposed rules.

**22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.**

The proposed rules do not require any new or additional equipment, supplies, or increased administrative costs for state permitted training programs.

**23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.**

There is no legal, consulting, or accounting costs imposed by these proposed rules to state permitted training programs.

**24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.**

There are no costs to small businesses from the proposed rules.

**25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.**

There is no additional cost to the agency from the proposed rules.

**26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.**

There are no exemptions or lesser standards in the proposed rules that affect small businesses.

**27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.**

The proposed rules were reviewed by small, licensed health care providers as well as small training programs, and input from these groups was incorporated such as the need to allow for virtual training opportunities.

**A. If small businesses were involved in the development of the rules, please identify the business(es).**

Small businesses were involved in the development of the proposed rules through representation of their associations, including Leading Age, County Medical Care Facility Association, HCAM and Michigan Home Care and Hospice. Several businesses had personnel to represent them but these businesses were not necessarily small, for example: Jackson County Medical Care Facility, Thornapple Manor, Medilodge of East Lansing and Ingham County Medical Care Facility.

**Cost-Benefit Analysis of Rules (independent of statutory impact)**

**28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.**

The proposed rules do require any costs associated with compliance.

**A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.**

The proposed rules will directly affect and benefit nurse aides, nurse aide trainers and nurse aide training programs, and they will bear no additional costs.

**B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.**

No additional costs will be imposed on businesses or other groups as a result of the proposed rules.

**29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.**

There are no additional costs placed upon the public or any regulated individuals.

**A. How many and what category of individuals will be affected by the rules?**

The proposed rules cover approximately 43,000 nurse aides, 500 nurse aide trainers, and 250 nurse aide training programs.

**B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?**

The proposed rules will assure minimum standards for nurse aides, nurse aide trainers, and nurse aide training programs and will have no quantitative impact.

**30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.**

There is no reduction or increase of costs to businesses, individuals, groups of individuals, or governmental units because of the proposed rules.

**31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.**

The proposed rules create minimum standards for nurse aides, nurse aide trainers, and nurse aide training programs that will help assure quality services and protect the health and welfare of residents and patients receiving services from a certified nurse aide.

**32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.**

It will have no impact on elimination or creation of jobs.

**33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.**

There will be no disproportionate impact on individual nurse aides, nurse aide trainers, or training programs, regardless of business size or location.

**34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.**

The department used approximately 8 focus group meetings that included input from nurse aides, trainers, training program administrators, provider associations, and the state Long-Term Care Ombudsman office. Input and recommendations from the focus group meetings were incorporated to the greatest degree possible as well as research of federal regulations and 3 other states' standards. The proposed rules represent a consensus between the department and stakeholders.

**A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.**

Part 219 of the Code became effective February 19, 2018, and the proposed rules are the first set of administrative rules to be established. Prior to enactment of Part 219, this program was solely governed under the federal standards. The proposed rules were developed with input from subject matter experts and external stakeholders to address areas of need.

## **Alternative to Regulation**

**35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.**

There are no reasonable alternatives to the proposed rules that would achieve similar goals.

**A. Please include any statutory amendments that may be necessary to achieve such alternatives.**

There are no reasonable alternatives to the proposed rules so there are no necessary statutory amendments.

**36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.**

The rules are required by statute and therefore a private market-based system can not serve as an alternative. No states use a private market-based system to regulate nurse aides, nurse aide trainers or nurse aide training programs.

**37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.**

The department incorporated as many recommendations as possible from stakeholders if the recommendations met statutory requirements and serve to protect public health and safety. To the extent possible, the proposed rules represent a consensus among those that participated in the development of these rules.

### **Additional Information**

**38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.**

This is not applicable to these rules.